

# **Native American Graves Protection and Repatriation Review Committee**

## **Dispute Procedures**

**September 2006**

**I. Authority.** Pursuant to 25 U.S.C. 3006 (c), the Native American Graves Protection and Repatriation Review Committee (Review Committee) is responsible for facilitating the resolution of disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of human remains and other cultural items, including convening the parties to the dispute if deemed desirable.

### **II. Definitions.**

- A. For the purpose of these procedures, definitions from the Native American Graves Protection and Repatriation Act (NAGPRA) apply (see 25 U.S.C. 3001 and 43 CFR 10.2).
- B. Interested party. An interested party (43 CFR 10.17 (b)) is:
  - 1. the Federal agency or museum that has disputed human remains or other cultural item in its possession or control; and
  - 2. any lineal descendant, Indian tribe, or Native Hawaiian organization that is, or is likely to be, geographically or culturally affiliated with the disputed human remains or other cultural item.
- C. An interested party may authorize an individual or organization to represent its interests for the purposes of the Review Committee's consideration of a dispute.

**III. Potential Disputes.** The following matters are appropriate for consideration by the Review Committee -

- A. Whether cultural items fit the definitions of human remains and other cultural items as specified in 25 U.S.C. 3001;
- B. Determination of the cultural affiliation of particular human remains or other cultural items; and
- C. Appropriate disposition of particular human remains or other cultural items.

### **IV. Dispute Procedures.**

- A. Alternative Dispute Resolution. The Review Committee believes that disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums should be resolved at the lowest organizational level and earliest time possible and strongly encourages the use of alternative methods of

dispute resolution. Interested parties involved in potential disputes may write to the Designated Federal Officer (DFO) [National NAGPRA Program, National Park Service, 1849 C Street NW (2253), Washington, DC 20240-0001] to discuss the possible application of alternative methods of dispute resolutions. Requests to consider alternative methods of dispute resolution should include a brief outline of the nature of the dispute, identification of all interested parties, and a brief history of attempts to resolve the dispute. The DFO may contact the other interested parties and provide a list of dispute resolution professionals to facilitate the resolution of disputes. The decision as to whether to use alternative methods of dispute resolution will be made by the interested parties.

- B. Requesting the Review Committee's consideration of a dispute. Written requests for the Review Committee's consideration of a dispute shall be directed to the DFO.
  1. The written request should include the following documentation:
    - a. statement outlining the relevant facts of the dispute, including citations of applicable portions of NAGPRA and NAGPRA regulations;
    - b. copies of any primary documents that are directly relevant to the issues in dispute, including but not limited to field notes, catalogue records, consultation documents, relevant studies, and other pertinent data;
    - c. statement describing the requesting party's interpretation of the facts;
    - d. statement identifying all interested parties and describing the requesting party's understanding of the other involved party's(ies') interpretation of the facts;
    - e. summary of the consultation record;
    - f. a statement of previous efforts to resolve the dispute, including the results of alternative dispute resolution efforts, if applicable; and
    - g. proposed solutions.
  2. The DFO will reply to the requesting party acknowledging receipt of the request for consideration of a dispute. The acknowledgment letter may include requests for clarification or additional information.
- C. Review Committee chair and DFO consultation. The DFO will provide the written request and supporting information to the Review Committee chair. The DFO will then consult with the chair to determine the appropriate response to the written request for review of the dispute. Issues that have not fully developed or that are not appropriate for consideration by the Review Committee may be referred back to the requesting party.
- D. Contacting the other interested parties to the dispute. After consultation between the chair and the DFO, the DFO will send the following correspondence to the other interested parties:

1. a copy of the requesting party's initial correspondence requesting consideration of a dispute, including the information provided in response to IV.B.1;
  2. a copy of the acknowledgment letter sent to the requesting party; and
  3. a request for similar information to the information described in IV.B.1.
- E. Review Committee chair and DFO consultation. The DFO will provide the information received from the other interested parties to members of the Review Committee. The DFO will then consult with the chair to determine the appropriate response to the written request for review of the dispute.
1. If the chair and DFO decide jointly that additional information is needed to determine whether the dispute is appropriate for the Review Committee to consider, the DFO will send a letter to the interested parties. Failure by the requesting party to respond to the request for additional information within 30 days of the date of the request will indicate that the proposed dispute is no longer active. The DFO will inform the chair of the status of the proposed dispute, send a letter regarding the proposed dispute status to the interested parties, and place the proposed dispute on inactive status. If the DFO receives a letter providing the additional information and requesting that the proposed dispute be re-activated, the DFO and chair will consult and jointly decide whether the proposed dispute is appropriate for consideration by the Review Committee.
  2. If the chair and DFO decide jointly that consideration of the dispute is not appropriate, the DFO will send a letter to the requesting party explaining why the Review Committee will not consider the dispute. A copy of the letter will be sent to the other interested party(ies) to the dispute. The requesting party may appeal a decision that consideration of a dispute is not appropriate at a subsequent meeting of the Review Committee by presenting new information relevant to the dispute. The request for an appeal shall be sent to the DFO in writing.
  3. If the chair and the DFO decide jointly that review of the dispute is appropriate, the DFO will send a formal notification to the requesting party via registered/return receipt mail service. Copies of this notification will be sent to the other interested party(ies) to the dispute.
- F. Before hearing a dispute –
1. After notification, the dispute will be scheduled for consideration at a Review Committee meeting;
  2. The DFO will forward copies of all relevant materials to the Review Committee members;

3. The DFO will inform all interested parties of the time and place of the meeting when the dispute will be considered and invite them to send representatives to present the dispute to the Review Committee; and
  4. The DFO will publish a notice in the Federal Register of the time and place of the meeting at which the dispute will be considered.
- G. Hearing a dispute –
1. At the meeting to consider a dispute, the Review Committee will consider the facts of the dispute, listen to presentations by representatives of the interested parties, question the interested parties' representatives, and make "advisory findings as to contested facts, and [make] recommendations to the interested parties or to the Secretary as to the proper resolution of disputes consistent with [NAGPRA] regulations and the Act." (43 CFR 10.17(b))
  2. Consensus remains the goal for Review Committee decision making. When consensus is not possible, majority and minority reports may be part of the Review Committee's findings and recommendations.
  3. The DFO will publish the Review Committee's findings and recommendations in the Federal Register over the chair's signature, and will send a copy of the published Federal Register notice to all interested parties.
- H. If interested parties fail to reach resolution. If the interested parties fail to reach resolution following notification of the Review Committee's findings and recommendation, any interested party may resubmit the dispute to the Review Committee if the interested party has substantial new information to offer for the Review Committee's consideration. The procedure for requesting reconsideration is the same as the procedure for the original request.
- I. Contact.
1. Interested Parties. a. The interested parties are encouraged to continue discussions after a dispute is proposed for Review Committee consideration. Interested parties should inform the DFO of any resolution reached prior to the Review Committee's consideration of the dispute. b. Once a dispute has been proposed for Review Committee consideration, interested parties or their representatives may not contact Review Committee members directly.
  2. Review Committee: Once a dispute has been proposed for Review Committee consideration, Review Committee members may not contact the interested parties directly.
  3. Contact between the interested parties or their representatives and the Review Committee or individual Review Committee members shall be through the DFO or in the setting of a Review Committee meeting only.

**V. Conflict of Interest.**

- A. Situations may arise in which individual Review Committee members or the DFO have or may appear to have a conflict of interest regarding a particular dispute. In such circumstances, the member or DFO will recuse themselves from the Review Committee's consideration of the dispute.
- B. In the event and for the time that the DFO must recuse him/herself as DFO during consideration a dispute, the DFO will delegate his/her responsibilities to another Federal employee who does not and would not appear to have a conflict of interest.

**VI. Public Access to this Document.** This document will be posted on the National NAGPRA Website.

**APPROVED:**

/s/ Rosita Worl, Chair

/s/ C. Timothy McKeown, Designated Federal Officer